1949. File No. G. of I / II / 49 (N)

Legal Deptt. Pt. II

B BRANCH

Subject:— Notifications under the Govt. of India Act 1935

for previous pps. pl. see pt. I

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Office of the H.L.A.

Sub-section (3) of section 266 of the Government of India Act, 1935, makes it obligatory that the Public Service Commission shall be consulted-

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

except of course in cases where by regulations it has been specified that it shall not be necessary for the Commission to be so consulted. By circular No. 2760/46, Political & Services Department, dated 15th November 1946, Government was pleased to direct that in the case of persons who participated in the civil disobedience movement of 1942 the recruiting authorities should consider their applications on merits notwithstanding their lack of the educational qualifications prescribed for any particular service or post and recommend their cases to Government for relaxation of the prescribed educational qualifications if they are otherwise capable of being selected on merits provided that (i) they establish satisfactorily the fact of their participation in the Civil Disobedience movement and (ii) the participation has resulted in their not obtaining the prescribed qualifications. In so far as these orders apply to cases in respect of which consultation regarding clauses (a) and (b) of sub-section (3) has been declared unnecessary by the regulation, the Commission could of course have no cause for complaint. The question which arises for consideration is whether the commission ought to have been consulted if the

intention was, as appears to be the case, to extend the order to cases which fall within the purview of the Commission.

The orders do not in any way affect the method of recruitment. Clauses (a) and (b) themselves contrast methods of recruitment with the principles to be followed in making appointments and the suitability of candidates. By "method" we mean a special form of procedure; and in thi context "method" would mean the actual manner and procedure of making recruitment, as for example, the agency by which the person is to be recruited, the procedure regarding examinations, inviting applications, interview selections etc. Clause (b) no doubt makes it obligatory to consult the Public Service Commission on the principles to be followed and on the suitability of candidates; and it h been held in H.L.A's opinion No. 4156 dated 21st May 1942, that the Commission ought to be consulted before making any deviation from the recruitment rules, which were originally framed in consultation with the Commission. The Circular does not in any way affect the question of the suitability; for, it is made perfectly clear that the recommendations to be made if the person is otherwise capable of being selected on merits which means that no different criterion of suitability is being prescribed in respect of such candidate. The circular does not dispense with the educational qualification or prescribe a lower qualification or lay down that the lower qualification shall be deemed to be a higher qualification. In contrast in this connection the notification No. G-1290/11801003-47 , dated 5th April 1945, issued by the Government of the United Provinces. The circular maintains intact the rule which requires educational qualifications for a particular service or post. What the circular does is to invite the recruiting authority to recommend the case for relaxation if the candidate is otherwise suitable. In other words, maintaining the rule intact, it provides for

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cases where Government may

~~be enabled to make an~~
be enabled to make an exception upon the recommendation of the recruiting authority: the exception be it noted does not take the ~~form~~ form of taking the cases of of such persons out of the scope of the rule altogether This. in my opinion. does not interfere with the principle or affect suitability. By "principle" we mean a general law or rule adopted or professed as a guide to action. that rule is not abrogated in this limited class of cases nor even modified. Similarly. suitability is also left to be judged by the same criterions which would apply to any other candidate.

2. In my opinion, therefore, it was not necessary to consult the Public Service Commission before issuing the circular.

O.C. Sd/-P.N.Lad
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Remembrancer of Legal Affairs.

U.O. to P.& S.D.No. 11094, dated the 5th October 1949.

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